



SUSPICIOUS ACTIVITY REPORT

NATIONAL CREDIT UNION ADMINISTRATION

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR PART 748

SUSPICIOUS ACTIVITY REPORT; REPORT OF CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Rule.

SUMMARY: This Final Rule changes existing references from "Criminal Referral Form" to "Suspicious Activity Report" to conform the language in the Rule to the new Suspicious Activity Report (SAR) which the financial regulatory agencies and the Department of the Treasury have developed to replace the Criminal Referral Form (CRF). It also reduces the required retention period for SARs and any attachment thereto from the current 10 years to 5 years. The final rule streamlines reporting requirements by providing that credit unions file a new SAR with NCUA and appropriate Federal law enforcement agencies by sending the SARs to the Financial Crimes Enforcement Network of the Department of the Treasury.

EFFECTIVE DATE: April 1, 1996.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

FOR FURTHER INFORMATION CONTACT: John K. Ianno or Jon Canerday, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION: An interagency Bank Fraud Working Group (BFWG), consisting of representatives from many federal agencies, including the federal financial institutions supervisory agencies (the Agencies) and law enforcement agencies, was formed in 1984. The BFWG addresses substantive issues, promotes cooperation among the Agencies and federal and state law enforcement agencies, and improves the federal government's response to white collar crime in financial institutions. It is under the auspices of the BFWG that the revisions to this regulation and the reporting requirements are being made.

Suspicious Activity Report

The Agencies have been working on a project to improve the criminal referral process, to reduce unnecessary reporting burdens on financial institutions, and to eliminate confusion associated with the current duplicative reporting of suspicious currency transactions in criminal referral forms and currency transaction reports (CTRs). Contemporaneously, Treasury analyzed the need to revise the procedures used by financial institutions for reporting suspicious currency transactions. As a result of these reviews, the Agencies and Treasury approved the development of a new referral process that includes suspicious currency transaction reporting.

To implement the reporting process, and to reduce unnecessary burdens associated with these various reporting requirements, the Agencies and the Department of the Treasury, through its Financial Crimes Enforcement Network (FinCEN), developed a new form for reporting known or suspected federal criminal law violations and suspicious currency transactions. The new report is designated the Suspicious Activity Report (SAR). The SAR is a simplified and shortened version of its predecessors. The new referral process and the SAR reduce the burden on credit unions for reporting known or suspected criminal violations and suspicious currency transactions. The SAR increases the reporting thresholds at which filing by credit

unions becomes mandatory. It also reduces from several to one the number of copies of the form a credit union is required to file and eliminates the need to file supporting documents with the form. Supporting documents must be retained for five years instead of the ten years currently required. These changes will reduce reporting burdens for credit unions.

Agencies anticipate that the new reporting system will be operational April 1, 1996. Once implemented, all referrals will be housed in one central database. As with the CRF, complete instructions for filing will continue to be on the SAR itself. The new referral process will be detailed in a Letter to Credit Unions to be issued contemporaneously with the new form. Until that time, credit unions will continue to file reports in accordance with current requirements.

Rulemaking - 5 U.S.C. 553

The NCUA finds that good cause exists to make this final rule effective on April 1, 1996, less than 30 days after its publication date. The rule implements technical changes to NCUA's existing rule intended to conform its language to the adoption of the SAR, and reduces the reporting and recordkeeping requirements of credit unions. The adoption of this rule, effective April 1, 1996, will assure that credit unions are able to comply with NCUA and Treasury reporting requirements for suspicious activity by completing a single SAR and filing it at one location.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (primarily those under \$1 million in assets). The types of changes made by this rule have no economic impact on credit unions. These are merely housekeeping changes. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. §605(b), this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule makes technical changes to reflect the use of Suspicious Activity Reports in place of Criminal Referral Forms and shortens the records retention requirements for the form and related documents. The Agencies and Treasury have submitted the SAR to OMB approval. The same amount of information will continue to be collected under this rule although reporting will be simplified. The Rule does not change any paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This Rule applies to all federally insured credit unions, simplifies the reporting process, and shortens the document retention period from that contained in the present rule. The NCUA Board has determined that this amendment is not likely to have any direct effect on states, the relationship between states, or the distribution of power and responsibilities among the various levels of government because federally insured credit unions are currently required to report crimes or suspected crimes which occur at their offices.

List of Subjects in 12 CFR Part 748

Bank Secrecy Act, Credit Unions, Crime, Currency, Reporting and Recordkeeping Requirements and Security Measures.

By the National Credit Union Administration Board on March 13, 1996.

Becky Baker
Secretary of the Board

Accordingly, NCUA amends 12 CFR Chapter VII as follows:

PART 748 - SUSPICIOUS ACTIVITY REPORT; REPORT OF CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

1. The heading of Part 748 is revised as set forth above.
2. The authority citation for Part 748 continues to read as follows:

Authority: 12 U.S.C. 1766 (a), 1786(q); 31 U.S.C. 5311.

3. Section 748.1 (c) is revised to read as follows:

§ 748.1 Filing of reports.

* * * * *

(c) *Suspicious Activity Report*

(1) Each federally-insured credit union will report any crime or suspected crime that occurs at its office(s), utilizing NCUA Form 2362, Suspicious Activity Report (SAR), within thirty calendar days after discovery. Each federally-insured credit union must follow the instructions and reporting requirements accompanying the SAR. Copies of the SAR may be obtained from the appropriate NCUA Regional Office.

(2) Each federally-insured credit union shall maintain a copy of any SAR that it files and the original of all attachments to the report for a period of five years from the date of the report, unless the credit union is informed in writing by the National Credit Union Administration that the materials may be discarded sooner.

(3) Failure to file a SAR in accordance with the instructions accompanying the report may subject the federally-insured credit union, its officers, directors, agents or other institution-affiliated parties to the assessment of civil money penalties or other administrative actions.

(4) Filing of Suspicious Activity Reports will ensure that law enforcement agencies and NCUA are promptly notified of actual or suspected crimes. Information contained on SARs' will be entered into an interagency database and will assist the federal government in taking appropriate action.

Suspicious Activity Report

FRB: FR 2230 OMB No. 7100-0212
FDIC: 6710/06 OMB No. 3064-0077
OCC: 8010-9,8010-1 OMB No. 1557-0180
OTS: 1601 OMB No. 1550-0003
NCUA: 2362 OMB No. 3133-0094
TREASURY: TD F 90-22.47 OMB No. 1506-0001

ALWAYS COMPLETE ENTIRE REPORT

Expires September 30, 1998

1 Check appropriate box:

a ☐ Initial Report b ☐ Corrected Report c ☐ Supplemental Report

Part I Reporting Financial Institution Information

2 Name of Financial Institution

3 Primary Federal Regulator

a ☐ Federal Reserve d ☐ OCC

b ☐ FDIC e ☐ OTS

c ☐ NCUA

4 Address of Financial Institution

5 City

6 State

7 Zip Code

8 EIN or TIN

9 Address of Branch Office(s) where activity occurred

10 Asset size of financial institution
\$.00

11 City

12 State

13 Zip Code

14 If institution closed, date closed
(MMDDYY) ____ / ____ / ____

15 Account number(s) affected, if any

a _____
b _____

16 Have any of the institution's accounts related to this matter been closed?

a ☐ Yes b ☐ No If yes, identify _____

Part II Suspect Information

17 Last Name or Name of Entity

18 First Name

19 Middle Initial

20 Address

21 SSN, EIN or TIN (as applicable)

22 City

23 State

24 Zip Code

25 Country

26 Date of Birth (MMDDYY)

27 Phone Number - Residence (include area code)
()

28 Phone Number - Work (include area code)
()

29 Occupation

30 Forms of Identification for Suspect:

a ☐ Driver's License b ☐ Passport c ☐ Alien Registration d ☐ Other _____

e Number _____ f Issuing Authority _____

31 Relationship to Financial Institution:

a ☐ Accountant d ☐ Attorney g ☐ Customer j ☐ Officer
b ☐ Agent e ☐ Borrower h ☐ Director k ☐ Shareholder
c ☐ Appraiser f ☐ Broker i ☐ Employee l ☐ Other _____

32 Is insider suspect still affiliated with the financial institution?

a ☐ Yes b ☐ No If no, specify { c ☐ Suspended e ☐ Resigned
d ☐ Terminated

33 Date of Suspension, Termination, Resignation (MMDDYY)
____ / ____ / ____

34 Admission/Confession

a ☐ Yes b ☐ No

Part III Suspicious Activity Information

2

35 Date of suspicious activity (MMDDYY) ____/____/____		36 Dollar amount involved in known or suspicious activity \$.00	
37 Summary characterization of suspicious activity:			
a <input type="checkbox"/> Bank Secrecy Act/Structuring/ Money Laundering	g <input type="checkbox"/> Counterfeit Check	m <input type="checkbox"/> False Statement	
b <input type="checkbox"/> Bribery/Gratuity	h <input type="checkbox"/> Counterfeit Credit/Debit Card	n <input type="checkbox"/> Misuse of Position or Self-Dealing	
c <input type="checkbox"/> Check Fraud	i <input type="checkbox"/> Counterfeit Instrument (other)	o <input type="checkbox"/> Mortgage Loan Fraud	
d <input type="checkbox"/> Check Kiting	j <input type="checkbox"/> Credit Card Fraud	p <input type="checkbox"/> Mysterious Disappearance	
e <input type="checkbox"/> Commercial Loan Fraud	k <input type="checkbox"/> Debit Card Fraud	q <input type="checkbox"/> Wire Transfer Fraud	
f <input type="checkbox"/> Consumer Loan Fraud	l <input type="checkbox"/> Defalcation/Embezzlement		
r <input type="checkbox"/> Other _____			
38 Amount of loss prior to recovery (if applicable) \$.00	39 Dollar amount of recovery (if applicable) \$.00	40 Has the suspicious activity had a material impact on or otherwise affected the financial soundness of the institution? a <input type="checkbox"/> Yes b <input type="checkbox"/> No	
41 Has the institution's bonding company been notified? a <input type="checkbox"/> Yes b <input type="checkbox"/> No			
42 Has any law enforcement agency already been advised by telephone, written communication, or otherwise? If so, list the agency and local address. Agency _____			
43 Address			
44 City	45 State	46 Zip Code	

Part IV Witness Information

47 Last Name		48 First Name		49 Middle Initial
50 Address			51 SSN	
52 City	53 State	54 Zip Code	55 Date of Birth (MMDDYY) ____/____/____	
56 Title		57 Phone Number (include area code) ()	58 Interviewed a <input type="checkbox"/> Yes b <input type="checkbox"/> No	

Part V Preparer Information

59 Last Name		60 First Name		61 Middle Initial
62 Title		63 Phone Number (include area code) ()		64 Date (MMDDYY) ____/____/____

Part VI Contact for Assistance (If different than Preparer Information in Part V)

65 Last Name		66 First Name		67 Middle Initial
68 Title		69 Phone Number (include area code) ()		
70 Agency (If applicable)				

Explanation/description of known or suspected violation of law or suspicious activity. This section of the report is critical. The care with which it is written may make the difference in whether or not the described conduct and its possible criminal nature are clearly understood. Provide below a chronological and complete account of the possible violation of law, including what is unusual, irregular or suspicious about the transaction, using the following checklist as you prepare your account. If necessary, continue the narrative on a duplicate of this page.

- a Describe supporting documentation and retain for 5 years.
- b Explain who benefited, financially or otherwise, from the transaction, how much, and how.
- c Retain any confession, admission, or explanation of the transaction provided by the suspect and indicate to whom and when it was given.
- d Retain any confession, admission, or explanation of the transaction provided by any other person and indicate to whom and when it was given.

- e Retain any evidence of cover-up or evidence of an attempt to deceive federal or state examiners or others.
- f Indicate where the possible violation took place (e.g., main office, branch, other).
- g Indicate whether the possible violation is an isolated incident or relates to other transactions.
- h Indicate whether there is any related litigation; if so, specify.
- i Recommend any further investigation that might assist law enforcement authorities.
- j Indicate whether any information has been excluded from this report; if so, why?

For Bank Secrecy Act/Structuring/Money Laundering reports, include the following additional information:

- k Indicate whether currency and/or monetary instruments were involved. If so, provide the amount and/or description.
- l Indicate any account number that may be involved or affected.

Paperwork Reduction Act Notice: The purpose of this form is to provide an effective and consistent means for financial institutions to notify appropriate law enforcement agencies of known or suspected criminal conduct or suspicious activities that take place at or were perpetrated against financial institutions. This report is required by law, pursuant to authority contained in the following statutes. Board of Governors of the Federal Reserve System: 12 U.S.C. 324, 334, 611a, 1844(b) and (c), 3105(c) (2) and 3106(a). Federal Deposit Insurance Corporation: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of the Comptroller of the Currency: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of Thrift Supervision: 12 U.S.C. 1463 and 1464. National Credit Union Administration: 12 U.S.C. 1786(a), 1786(e). Financial Crimes Enforcement Network: 31 U.S.C. 5318(g). Information collected on this report is confidential (5 U.S.C. 552(b)(7) and 552a(k)(2), and 31 U.S.C. 5318(g)). The Federal financial institutions regulatory agencies and the U.S. Departments of Justice and Treasury may use and share the information. Public reporting and recordkeeping burden for this information collection is estimated to average 36 minutes per response, and includes time to gather and maintain data in the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 and, depending on your primary Federal regulatory agency, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20561; or Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429; or Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219; or Office of Thrift Supervision, Enforcement Office, Washington, DC 20652; or National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314; or Office of the Director, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182.

Suspicious Activity Report Instructions

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspected or known criminal violations and suspicious activities to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure."

Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) requires that a financial institution, and its directors, officers, employees and agents who, voluntarily or by means of a suspicious activity report, report suspected or known criminal violations or suspicious activities may not notify any person involved in the transaction that the transaction has been reported.

In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the financial institution shall immediately notify, by telephone, appropriate law enforcement and financial institution supervisory authorities in addition to filing a timely suspicious activity report.

WHEN TO MAKE A REPORT:

1. All financial institutions operating in the United States, including insured banks, savings associations, savings association service corporations, credit unions, bank holding companies, nonbank subsidiaries of bank holding companies, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks, are required to make this report following the discovery of:
 - a. **Insider abuse involving any amount.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.
 - b. **Violations aggregating \$5,000 or more where a suspect can be identified.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating \$5,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an "alias," then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported.
 - c. **Violations aggregating \$25,000 or more regardless of a potential suspect.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating \$25,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.
 - d. **Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.** Any transaction (which for purposes of this subsection means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or

sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the financial institution and involving or aggregating \$5,000 or more in funds or other assets, if the financial institution knows, suspects, or has reason to suspect that:

- i. The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law;
- ii. The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or
- iii. The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

The Bank Secrecy Act requires all financial institutions to file currency transaction reports (CTRs) in accordance with the Department of the Treasury's implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR whenever a currency transaction exceeds \$10,000. If a currency transaction exceeds \$10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious or criminal aspects of the transaction). If a currency transaction equals or is below \$10,000 and is suspicious, the institution should only file a suspicious activity report.

2. A financial institution is required to file a suspicious activity report no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a suspicious activity report. If no suspect was identified on the date of detection of the incident requiring the filing, a financial institution may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.
3. This suspicious activity report does not need to be filed for those robberies and burglaries that are reported to local authorities, or (except for savings associations and service corporations) for lost, missing, counterfeit or stolen securities that are reported pursuant to the requirements of 17 CFR 240.17f-1.

HOW TO MAKE A REPORT:

1. Send each completed suspicious activity report to:

FinCEN, Detroit Computing Center, P.O. Box 33980, Detroit, MI 48232
 2. For items that do not apply or for which information is not available, leave blank.
 3. Complete each suspicious activity report in its entirety, even when the suspicious activity report is a corrected or supplemental report.
 4. Do not include supporting documentation with the suspicious activity report. Identify and retain a copy of the suspicious activity report and all original supporting documentation or business record equivalent for 5 years from the date of the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.
 5. If more space is needed to complete an item (for example, to report an additional suspect or witness), a copy of the page containing the item should be used to provide the information.
 6. Financial institutions are encouraged to provide copies of suspicious activity reports to state and local authorities, where appropriate.
-